

Exhibit E

[Page 1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP FEI, on behalf of : 07 Civ. 8785
himself and classes of :
those similarly situated, :
Plaintiff, :
-against- :
WEST LB AG, :
Defendant : Rule 30(b) (6)

Tuesday, March 18, 2008

Pretrial examination of LISA CARRO, held in the
offices of Outten & Golden, 3 Park Avenue, 29th Floor,
New York, New York, commencing at 9:05 a.m., on the
above date, before Mickey Dinter, Registered
Professional Reporter, Certified Shorthand Reporter
and Notary Public for the State of New York.

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[Page 18]

1 director, director, executive

2 director, managing director.

3 BY MS. NEILAN:

4 Q. When did West LB first start using
5 the corporate titles?

6 A. I don't know.

7 Q. Did West LB use these corporate
8 titles?

9 A. They were in effect when I joined,
10 yes.

11 Q. Do you know if these corporate
12 titles were in place in October 2001 until
13 November 2004?

14 A. I couldn't say for sure.

15 Q. Do you know if there were any
16 corporate titles at West LB used prior to
17 November 2004?

18 A. I'm not aware of any.

19 Q. Do you know who came up with these
20 titles?

21 A. I have no idea.

22 Q. What does the title "executive"
23 mean?

24 A. It doesn't have a meaning. It's
25 just a title.

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1 Q. What is it a title for?

2 A. It's a title for certain employees
3 who are at a lower level in the
4 organization. By "lower," I mean
5 secretaries, people in the mail room, not
6 necessarily professionals, what we
7 considered to be professionals.

8 Q. And are executives the lowest level
9 of employees at West LB?

10 A. It's the first title, the lowest
11 level title.

12 Q. Is there anyone who has a position
13 that is below a position of executive at
14 West LB?

15 A. In New York?

16 Q. Let's start with New York, yes.

17 A. No, not really.

18 Q. What about elsewhere in the
19 United States?

20 A. No.

21 Q. Anybody lower than the title of
22 executive?

23 A. Not that I'm aware of.

24 Q. Do all employees at West LB have
25 corporate titles?

[Page 20]

1 A. All employees in the United States
2 have corporate titles.

3 Q. So, you mentioned that secretaries
4 and employees in the mail room are
5 classified as executives, is that correct?

6 A. Yes. There may be others. That's
7 not a full list.

8 Q. Please give me the full list of all
9 types of employees that are classified as
10 executive.

11 A. I don't have a full list off the
12 top of my head.

13 Q. What employees do you know, sitting
14 here now, to be classified as executives
15 and mail employees?

16 A. There may be some people in the IT
17 department, some people in our Purchasing
18 Department. There may be others, but I
19 don't have a full list off the top of my
20 head.

21 Q. Are there any documents that list
22 which employees are classified as
23 executives?

24 A. Documents? There may be documents.
25 There may be reports, yes, that would list

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1 information that you are looking at?

2 A. I believe there is some sort of
3 indicator inside of payroll, but I
4 couldn't say for sure because we switched
5 payroll systems. So, depending upon the
6 timeframe, I would have to, maybe, use
7 more than one means to determine that.

8 Q. When you say "indicator," what do
9 you mean?

10 A. A field. A field in the system.

11 Q. So, the payroll system has some
12 sort of code or key that indicates whether
13 an employee is exempt or non-exempt?

14 A. I believe so. I believe there may
15 be something inside of the payroll system
16 to indicate that.

17 Q. Is that in the current system?

18 A. For certain in the current payroll
19 system; and I would guess there would have
20 been something, but I couldn't say for
21 sure since, again, I don't manage the
22 payroll system.

23 Q. When was the payroll system
24 changed?

25 A. The most recent time was just this

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1 past January and there was one time before
2 that where we switched payroll systems
3 which was prior to my joining West LB.

4 Q. What is the name of the current
5 payroll system?

6 A. ADP.

7 Q. What is the name of the payroll
8 system prior to that January 2008?

9 A. Ceridian.

10 Q. What is the name of the payroll
11 system prior to you joining?

12 A. I don't know.

13 Q. What happened in June 2005 that
14 West LB started to classify all executives
15 as non-exempt?

16 MR. BASSEN: Objection.

17 Asked and answered.

18 THE WITNESS: There was a
19 project that was initiated by
20 consultants and our internal counsel
21 to address changes in legislation and,
22 as part of that, they reviewed the
23 classifications of all of our
24 executives.

25 BY MS. NEILAN:

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1 Q. What is the name of the consulting
2 company involved in the classification
3 project.

4 A. Her name was Vivian Yost.

5 Q. What is the name of the in-house
6 counsel?

7 A. Gregory Lahey.

8 Q. Apart from those two individuals,
9 was anyone else from West LB involved in
10 the reclassification project?

11 A. Yes. A number of people in the
12 resource department.

13 Q. Who?

14 A. I was involved at one point. Greg
15 Reiber was involved. There may have been
16 others, but I'm not sure who else might
17 have been.

18 Q. Was Linda Shirley involved?

19 A. I don't think so.

20 Q. What about Amy Favetta?

21 A. She may have been involved. I
22 don't know for sure.

23 Q. What about Frank Canuto?

24 A. I don't think Frank would have been
25 involved in that.

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1 Q. I'm just asking for your knowledge.

2 A. I don't know for sure.

3 Q. Who would know?

4 A. They would know.

5 Q. As part of that reclassification
6 project, did they conduct any surveys?

7 A. What do you mean by survey?

8 Q. Do you not know what a survey
9 means?

10 A. I would like to know what you mean.
11 Why don't you tell me what you want to
12 know.

13 Q. What is your definition of survey?

14 MR. BASSEN: Objection.

15 THE WITNESS: Based on my
16 definition of survey, I'm not aware
17 that --

18 BY MS. NEILAN:

19 Q. What is your definition of survey?

20 A. A document which asks questions of
21 individuals, be it electronic in nature or
22 written in nature.

23 Q. Do you have any knowledge of what
24 was involved in the exemption testing
25 other than viewing the job descriptions?

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1 A. They applied the exemption test to
2 the job descriptions or the job
3 responsibilities and functions the
4 individuals were responsible for.

5 Q. And did they apply exemption
6 testing to the job description by just
7 looking at the piece of paper that had the
8 job description?

9 A. I don't know exactly what they did.
10 I know other than having reviewed the
11 actual job descriptions or duties of the
12 individual, they may have asked questions.
13 They may have had to add information to
14 the job description. I don't know.

15 Q. You don't know, you have no
16 knowledge of them interviewing any
17 employees regarding their duties, is that
18 correct?

19 A. I don't know. They may have. I
20 would think that they probably did, but I
21 don't know for sure.

22 Q. You have no knowledge of that?

23 A. No. I have no knowledge of it.

24 Q. When you said that they applied the
25 exemption testing function to the

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1 individuals, what do you mean?

2 A. Those particular documents they
3 used in order to evaluate the individuals'
4 duties and responsibilities.

5 Q. What document is that?

6 A. An exemption testing document.

7 Q. Where did this document come from?

8 A. I don't know where they got it from.

9 Q. Can you describe for me what the
10 exemption testing document looked like?

11 A. It looks like a form.

12 Q. What information is on the form?

13 A. I don't recall.

14 Q. Was it a checklist? Did they have
15 narrative responses?

16 A. I don't recall. I know there was
17 typed information on it, but I don't know
18 exactly what was on it.

19 Q. And do you know if that exemption
20 testing document was created internally at
21 West LB or came from someplace else?

22 A. I'm pretty sure it came from
23 someplace else.

24 Q. Do you know where it came from?

25 A. I do not know.

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1 Q. Was the role that they were filling
2 listed in their job description?

3 A. The job description was a complete
4 description of their responsibilities.

5 Q. Did the H.R. person hiring an
6 individual after June 2005 know how to
7 classify them based upon their job
8 description?

9 A. Yes.

10 Q. Did you have any involvement in
11 exemption testing in 2004?

12 A. No.

13 Q. Did you ever issue any reports
14 regarding exemption testing?

15 A. Issuing reports? I believe I
16 updated a document with some numbers.

17 Q. What kind of numbers?

18 A. The number of individuals that were
19 evaluated, number of individuals that were
20 deemed exempt, non-exempt, et cetera.

21 Q. As part of its exemption testing,
22 did West LB find that it had improperly
23 classified executives as exempt?

24 MR. BASSEN: Objection.

25 THE WITNESS: I couldn't

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1 say that they determined that
2 individuals were improperly classified.
3 What I can say is that they had
4 determined that certain individuals
5 based on their responsibilities should
6 have been reclassified as non-exempt.

7 BY MS. NEILAN:

8 Q. As part of this reclassification
9 project, West LB determined that certain
10 executives were actually, indeed,
11 non-exempt employees?

12 A. West LB determined that individuals
13 who, up until that point in time, may have
14 been classified as exempt based on their
15 dues and responsibilities or reclassified
16 as non-exempt.

17 Q. Why did West LB make that
18 determination?

19 A. Based on the exemption testing.

20 Q. Did West LB find that in fact some
21 of these executives were not properly
22 classified previously?

23 MR. BASSEN: Objection.

24 Asked and answered.

25 THE WITNESS: As I said,

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1 based on the responsibilities that
2 were evaluated during the testing,
3 West LB determined that those
4 individuals should have been classified
5 as non-exempt.

6 BY MS. NEILAN:

7 Q. But they were not previously?

8 A. That they were not previously.

9 Q. Did West LB seek any opinions from
10 the Federal or State Department of Labor
11 with respect to its reclassification
12 project?

13 A. I couldn't say. I didn't
14 participate in the exemption testing, so I
15 don't know.

16 Q. Did West LB seek the advice of
17 outside counsel with respect to its
18 exemption testing?

19 A. I don't know. I don't know if they
20 did as it relates to executives
21 reclassification.

22 Q. So when did... strike that.

23 What company did the
24 consultant work for that West LB hired to
25 conduct the exemption testing?

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1 A. An independent consultant.

2 Q. Was she affiliated with any
3 corporate entity?

4 A. I don't think so.

5 Q. Apart from Miss Yost, did West LB
6 hire any other consultants with respect to
7 the exemption testing or the re-
8 classification project?

9 A. Vivian Yost.

10 Q. Apart from Vivian Yost, did West LB
11 hire any other outside consultant with
12 respect to the exemption testing on the
13 reclassification project?

14 A. Not that I'm aware of.

15 Q. Approximately, how many executives
16 did West LB determine that it had to
17 reclassify as non-exempt after the
18 reclassification project?

19 MR. BASSEN: Objection.

20 THE WITNESS: I don't know
21 the exact number.

22 BY MS. NEILAN:

23 Q. Can you give me your best estimate?

24 A. No, I really can't. I don't have
25 an idea what the number was.

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1 Q. And do you think that there were
2 approximately forty executives in 2005
3 also or were there more or less?

4 A. There might have been more. There
5 were more people at that time. There
6 might have been slightly more.

7 Q. So, about out of those
8 approximately forty, maybe four executives
9 in 2005, what percentage did West LB
10 reclassify as non-exempt after the
11 reclassification project?

12 MR. BASSEN: Objection.

13 THE WITNESS: I don't
14 recall.

15 BY MS. NEILAN:

16 Q. Was it all of them?

17 MR. BASSEN: Objection.

18 THE WITNESS: Again, I
19 don't recall the numbers. I don't.

20 BY MS. NEILAN:

21 Q. I don't want the exact number. I'm
22 entitled to your best estimate.

23 MR. BASSEN: You are not.

24 It's beyond the scope of the
25 deposition. It's neither a policy nor

1 a practice.

2 THE WITNESS: It's not an
3 estimate. Honestly, it would be a
4 guess. A guess is not going to be
5 anywhere near right.

6 BY MS. NEILAN:

7 Q. Give me your best guesstimate.

8 MR. BASSEN: Objection.

9 THE WITNESS: Honestly, I
10 don't know. All of them, no. Not all
11 of them were reclassified.

12 BY MS. NEILAN:

13 Q. Was it more than one?

14 A. It was more than one.

15 Q. Do you know if it was closer to ten
16 or closer to forty?

17 MR. BASSEN: Continuing
18 objection.

19 THE WITNESS: I don't know.
20 I honestly don't know.

21 BY MS. NEILAN:

22 Q. So, what did West LB do after it
23 reclassified executives as non-exempt
24 after the exemption testing was complete
25 with respect to the compensation of those

1 individuals?

2 A. Once they were reclassified as
3 non-exempt, they were eligible for overtime.

4 Q. When did West LB start paying
5 executives after the reclassification
6 project overtime compensation?

7 A. Yes. They paid them overtime after
8 they were reclassified and they paid them
9 back pay 'til, I believe it was,
10 August '04.

11 Q. When did West LB start paying these
12 executives that it reclassified overtime
13 going forwards?

14 A. I believe it was June of '05.

15 Q. In June '05, did West LB start
16 paying all executives overtime compensation?

17 A. All executives who were classified
18 as non-exempt.

19 Q. So after June '05, have there been
20 some executives at West LB who have been
21 reclassified as exempt?

22 A. Not that I'm aware of.

23 Q. What do you mean when you say that
24 West LB paid back pay to August 2004?

25 A. I mean that they were paid for any

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1 overtime that they did back until 2004.

2 Sorry, August 2004.

3 Q. Who was responsible, I mean which
4 individuals were responsible for paying
5 reclassified executives back pay?

6 A. For paying them? Actually, paying
7 them?

8 Q. Yes.

9 A. The payroll manager was responsible
10 for paying them.

11 Q. And how did the payroll manager
12 know how much to pay them?

13 A. The payroll manager received a
14 spreadsheet with the names of the
15 individuals impacted. He was asked to
16 verify the amounts to insure that the
17 calculations were correct and to process
18 the payments.

19 Q. Who gave the payroll manager the
20 spreadsheet?

21 A. I did.

22 Q. Do you have that spreadsheet?

23 A. Do I have the spreadsheet?

24 Probably somewhere we have it.

25 Q. How did you create that spreadsheet?

1 A. How?

2 Q. Did you create the spreadsheet?

3 A. The spreadsheet was, yes. I don't
4 know that I created the original version
5 of the spreadsheet. Yes, I updated the
6 spreadsheet to include the estimated
7 overtime for those who were impacted.

8 Q. When you say "those who were
9 impacted," those who were reclassified as
10 non-exempt?

11 A. Yes. Those who were reclassified,
12 yes.

13 Q. How did you calculate the back pay
14 that was to be paid to the reclassified
15 executives?

16 A. The executives were consulted along
17 with our managers. The managers did a
18 first estimate. The individual managers
19 did a first estimate of the overtime. And
20 the manager met with their, they met with
21 their staff members once the estimate was
22 done and it was processed.

23 Q. Did you ever talk to the managers
24 about how to conduct this first estimate?

25 A. Yes.

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1 Q. What did you tell them?

2 A. We told them that the individuals
3 were reclassified and that they were
4 eligible for overtime. We asked them to
5 do the first estimate of what they
6 believed their overtime might be based on
7 their own knowledge of the individuals'
8 schedule, projects that they might have
9 worked on, et cetera.

10 They had a certain period
11 of time in which to conduct the estimate
12 and provide it to Human Resources. Once
13 the calculation was done, the managers
14 were notified of the calculation and were
15 asked to meet with their individual
16 employees to discuss the situation with
17 them and explain it to them and to provide
18 them with the overtime calculation. If
19 anybody had a question about it or dispute
20 or, you know, another calculation, they
21 were welcome to come and speak with
22 someone at HR about that and we were open
23 to revising it.

24 Q. Did HR every make any revisions
25 that were prepared by the managers?

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1 A. I don't know. I don't remember.

2 Q. Why did West LB choose to pay the
3 back pay to August 2004?

4 A. We were advised by counsel to do it.

5 Q. Who advised you to do that?

6 A. Certainly, internal counsel; and it
7 may have been in conjunction with
8 discussions that he had externally.

9 Q. With who internally?

10 A. Greg Lahey.

11 Q. Did anyone explain to you why
12 August 2004 was chosen as the date?

13 MR. BASSEN: Objection.
14 Privileged.

15 MS. NEILAN: She waived the
16 privilege.

17 MR. BASSEN: No, she hasn't.

18 MS. NEILAN: Are you
19 instructing her not to answer?

20 MR. BASSEN: Yes. Outside
21 the scope of this deposition.

22 BY MS. NEILAN:

23 Q. Do you know why August 2004 was
24 chosen as the date?

25 MR. BASSEN: Objection.

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1 She said it was on the advice of
2 counsel.

3 BY MS. NEILAN:

4 Q. Can you answer the question?

5 MR. BASSEN: I direct her
6 not to answer the question.

7 MS. NEILAN: Why?

8 MR. BASSEN: Because it's
9 outside the scope of the deposition
10 and it's privileged, as I told you
11 before.

12 If you want to take a
13 deposition of this thing, have a
14 notice, we will consider whether to
15 waive the privilege or not, which we
16 very well might do.

17 MS. NEILAN: With respect
18 to your first objection, that does not
19 prohibit, not allow the defendant not
20 to answer. The witness, excuse me,
21 did not answer the question.

22 Are you instructing her not
23 to answer because of attorney/client
24 privilege? That's the only grounds
25 that she cannot answer the question.

1 privileged.

2 MS. NEILAN: So, it's based
3 on privilege?

4 MR. BASSEN: In conjunction
5 with an improper question outside the
6 scope. If there was a proper scope,
7 then we would consider waiving the
8 privilege. It's not the time for us
9 to consider it here because that's not
10 what the deposition called for.

11 MS. NEILAN: If you do not
12 consider it attorney/client privilege,
13 then I will move on.

14 BY MS. NEILAN:

15 Q. Did West LB make any retroactive
16 payments to executives for work that they
17 performed prior to August 2004?

18 A. Not that I'm aware of.

19 Q. So, with respect to all of the
20 executives that West LB classified in...
21 strike that.

22 Let me start again. With
23 respect to all of the executives that West
24 LB reclassified as non-exempt in the
25 spring of 2005, is it correct that West LB

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1 did not pay any of those executives
2 overtime compensation for any time period
3 prior to August 2004?

4 A. Repeat the question.

5 Q. Sure. With respect to all the
6 executives that West LB reclassified as
7 non-exempt in the spring of 2005, is it
8 correct that West LB did not pay any of
9 those executives overtime compensation for
10 any time period prior to August 2004?

11 A. Not that I'm aware of.

12 Q. So is the answer, yes, to the best
13 of your knowledge?

14 MR. BASSEN: Asked and
15 answered.

16 THE WITNESS: I'm not aware
17 of any additional overtime pay.

18 BY MS. NEILAN:

19 Q. Are you aware of West LB paying any
20 executives that it reclassified as
21 non-exempt in the spring of 2005 overtime
22 compensation for work that they performed
23 prior to August 2004?

24 MR. BASSEN: Let the record
25 note this is the third time the

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1 question has been asked and answered.

2 THE WITNESS: I'm not aware
3 of it.

4 BY MS. NEILAN:

5 Q. How did you verify the amounts of
6 overtime that the managers came up with
7 when they estimated unpaid overtime?

8 MR. BASSEN: Objection.
9 Asked and answered.

10 THE WITNESS: Managers did
11 the initial estimate and they reviewed
12 their estimates with the executives.
13 Executives had the opportunity to
14 agree or disagree and that's, basically,
15 how the estimates were determined.

16 BY MS. NEILAN:

17 Q. Did you verify in any way the
18 estimates?

19 A. I personally did not verify the
20 estimates.

21 Q. Did anyone, other than the
22 individual executives managers, verify the
23 estimates?

24 A. No.

25 Q. And were the managers actually

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1 coming up with mathematical calculations
2 or were they coming up with hours worked
3 or something else?

4 A. They were coming up with estimates
5 for overtime, hours worked beyond the
6 normal hours based on projects,
7 assignments, workloads, transactions that
8 were being done during that period of time.

9 Q. What do you mean when you say
10 "beyond the normal hours"?

11 A. Normal hours are thirty-five hours
12 a week.

13 Q. So, prior to the reclassification,
14 were executives paid hourly or salary?

15 A. Prior to the reclassification? The
16 executives were paid, they were salaried.

17 Q. And did they receive a salary
18 regardless of the hours that they worked
19 during the week?

20 A. Yes.

21 Q. And, so, if an executive worked
22 thirty hours a week, did the executive
23 receive a full salary?

24 A. If they were exempt -- if they were
25 classified as exempt and they were

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1 A. Or in asset management here in the
2 United States.

3 Q. Just here in the United States.

4 A. There's not that many. I would say
5 there's, maybe, maybe a dozen.

6 Q. With respect to the current
7 employees in the HR department that West
8 LB classifies as exempt, does West LB
9 classify them as exempt under the
10 administration exemption or professional
11 exemption?

12 MR. BASSEN: No objection
13 to the extent it calls for a legal
14 conclusion.

15 THE WITNESS: I did not do
16 the exemption testing. I wouldn't be
17 able to speak to that.

18 BY MS. NEILAN:

19 Q. Do you know what the executive
20 exemption is under the Fair Labor
21 Standards Act?

22 A. I have general knowledge of it.

23 Q. What do you know about it?

24 A. Not enough to speak intelligently
25 about it.

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1 Exemption testing was done
2 by our internal counsel. As it relates to
3 managers, it was done by external counsel.

4 Q. Do you have any knowledge of the
5 administrative exemption under the Fair
6 Labor Standards Act?

7 A. I have knowledge that it exists. I
8 don't know very much about it. We relied
9 on external counsel to do the evaluations
10 of those positions.

11 Q. Did you ever receive any training
12 on the requirement of the Fair Labor
13 Standards Act?

14 A. Personally?

15 Q. Yes.

16 A. No.

17 Q. Did you ever receive any training
18 on the requirements of New York Labor Law?

19 A. No.

20 Q. What exemption testing was
21 performed by counsel with respect to
22 managers?

23 A. The outside counsel was provided
24 with job descriptions. They conducted
25 interviews with managers with respect to

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1 the job responsibilities and duties of
2 individuals and they determined the
3 classification of those positions that
4 were being evaluated.

5 Q. Who was the outside counsel?

6 A. Rich Greenberg.

7 Q. What law firm?

8 A. Jackson Lewis.

9 Q. When did West LB retain Rich
10 Greenberg to conduct this exemption
11 testing?

12 A. I don't know the exact date that he
13 was retained. I know that he was given or
14 provided with information sometime in the
15 fall of 2006. I believe he was retained
16 prior to that.

17 Q. And prior to your retaining Mr.
18 Greenberg to conduct this exemption
19 testing, did West LB conduct any other
20 exemption testing with respect to managers?

21 A. Not that I'm aware of.

22 Q. With respect to the
23 reclassification project that you
24 testified earlier, was that limited to
25 executives?

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1 A. The reclassification of the
2 executives was, yes, separate than the
3 evaluation of the managers.

4 Q. And as part of the -- prior to the
5 exemption testing performed by outside
6 counsel from Jackson Lewis, how did West
7 LB classify managers?

8 A. I believe up until that point,
9 most, if not all managers, were classified
10 as exempt.

11 Q. Did there come a time when West LB
12 reclassified some managers as non-exempt
13 employees?

14 A. Yes. There was a time after the
15 evaluation that West LB reclassified some
16 managers as non-exempt.

17 Q. When was that?

18 A. The first reclassification for a
19 small group of individuals was done in
20 January'ish of 2007 and the rest were
21 completed, I would say, in May of 2007.

22 Q. And how many managers were
23 reclassified in 2007?

24 A. Somewhere around a dozen.

25 Q. And how many managers were

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1 reclassified in May of 2007?

2 A. Somewhere around a dozen. Around a
3 dozen, I would say.

4 Q. And apart from those two
5 reclassifications, approximately
6 twenty-four positions, did West LB ever
7 reclassify any other managers?

8 A. Since that time, I don't believe
9 so. I don't believe that anyone up until,
10 I don't believe anybody was promoted. I
11 don't believe that anyone else was
12 reclassified since that time because that
13 would have been after promotions, so, no.

14 Q. With respect to those twenty-four
15 positions that were -- strike that.

16 With respect to the
17 twenty-four "manager" positions that were
18 reclassified from exempt to non-exempt,
19 did West LB apply the administrative
20 executive or professional exemption?

21 A. I don't know. That was determined
22 by outside counsel.

23 Q. You have no knowledge regarding
24 that?

25 A. I don't know specifically, no.

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1 Q. Who made the decision at West LB to
2 reclassify those twenty-four manager
3 positions?

4 A. We were guided by the advice given
5 to us by counsel.

6 Q. Were you involved in the process?

7 A. I was involved in the process.

8 Q. Who else was involved in the
9 process?

10 A. Amy Favetta was involved in the
11 process. Gregory Reiber was involved in
12 the process. A variety of managers who
13 were interviewed were involved in the
14 process. Natalie Henriquez might have
15 been involved to a lesser extent than the
16 rest of us.

17 Q. Anybody else?

18 A. Linda, probably, too. Again, to a
19 lesser extent than the rest of us.

20 Q. Linda Shirley?

21 A. Yes.

22 Q. What was your involvement in the
23 process?

24 A. My involvement in the process was
25 very limited.

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1 Amy was managing the
2 process in conjunction with Greg and they
3 were dealing with the outside, with
4 outside counsel on the project.

5 Q. What did you do on the project?

6 A. I met with Amy. I met with Greg to
7 discuss the project, the status of the
8 project, the outcome of the project and at
9 one point, I met with Rich Greenberg with
10 respect to the positions within HR.

11 Q. As part of the reclassification of
12 some managers, did West LB issue any
13 surveys?

14 MR. BASSEN: Objection.

15 THE WITNESS: I don't
16 believe that there were any surveys.
17 There were interviews.

18 BY MS. NEILAN:

19 Q. Who conducted the interviews?

20 A. Rich Greenberg.

21 Q. Who did he interview?

22 A. He interviewed a number of
23 managers. I couldn't say exactly who, off
24 the top of my head.

25 Q. Did he interview all of the

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1 managers at West LB?

2 A. I don't know if he interviewed all
3 of them.

4 Q. Do you know any of the managers
5 that he did interview? Do you know their
6 names?

7 A. I don't know. I couldn't say who
8 exactly who he interviewed.

9 Q. How do you know he interviewed
10 managers?

11 A. Because I was advised by Amy and
12 Greg who set up the interviews.

13 Q. Do you know how many interviews
14 they set up?

15 A. I don't know how many they set up.

16 Q. Do you know how long the interviews
17 lasted?

18 A. The individual interviews them-
19 selves?

20 Q. Yes.

21 A. I have no idea.

22 Q. Did you sit in on any of these
23 interviews?

24 A. No. Only my own interview. Only
25 when I spoke to him about the HR people.

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1 Q. And when you say that Richard
2 Greenberg interviewed the managers, was he
3 interviewing the managers that were at the
4 subject of the reclassification project or
5 was he interviewing supervisors of those
6 individuals in questions?

7 A. Interviewing the supervisors of
8 those individuals in question.

9 Q. So, did Richard -- did outside
10 counsel conduct any interviews as part of
11 its exemption testing of managers, of the
12 actual managers themselves?

13 A. I don't know. I'm not sure if he
14 did or not.

15 Q. You just have knowledge of
16 interviewing supervisors of the managers,
17 is that correct?

18 A. Yes.

19 Q. You have no knowledge of outside
20 counsel interviewing the managers them-
21 selves?

22 A. No, I do not.

23 Q. Would Amy Favetta or Greg Reiber
24 know whether managers themselves were
25 interviewed as part of the exemption

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1 testing of managers?

2 A. Yes.

3 Q. So, you never discussed that with
4 Greg Reiber and Amy Favetta?

5 A. It never came up in conversation.

6 Q. What did come up in your
7 conversations regarding exemption testing
8 managers?

9 A. Basically, just status updates,
10 where were we with the project?

11 Q. Do you know what factors outside
12 counsel was evaluating when he interviewed
13 the supervisors or the managers as part of
14 the exemption testing?

15 MR. BASSEN: I ask you not
16 to answer the question.

17 MS. NEILAN: Why are you
18 asking her not to answer?

19 MR. BASSEN: Two reasons:
20 Same as before. Outside the scope of
21 the notice and it's privileged and
22 work product.

23 If you want to have a
24 proper deposition about it with a
25 proper notice, we will consider

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1 classifications changed?

2 A. I don't know.

3 Q. Were any of the managers in the HR
4 department reclassified in either of these
5 reclassifications in 2007?

6 A. No.

7 Q. So prior to 2007, all managers in
8 HR have been classified as exempt, is that
9 correct?

10 A. That's correct.

11 Q. And since 2007, up to the present
12 time, all managers, with the exception of
13 Sandra Russo, have been classified as
14 exempt, is that correct?

15 A. That's correct.

16 Q. As part of the reclassification in
17 January 2007, did West LB pay any of those
18 managers any money?

19 A. No.

20 Q. What about the reclassification in
21 May 2007?

22 A. Once they became, once they were
23 reclassified as non-exempt, they were then
24 eligible for overtime.

25 Q. So that approximately twelve

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1 managers that West LB reclassified in
2 January 2007 classified them from exempt
3 employees to non-exempt employees, is that
4 correct?

5 A. Yes.

6 Q. Why did West LB reclassify them as
7 non-exempt?

8 A. They were reclassified based on the
9 advice of counsel.

10 Q. What was counsel's decision based
11 on?

12 MR. BASSEN: Objection. I
13 direct her not to answer.

14 MS. NEILAN: Why are you
15 directing her not to answer?

16 MR. BASSEN: You asked what
17 was counsel's advice based on. That's.
18 privileged work product, outside this
19 deposition.

20 If you want to take a
21 deposition on that properly noticed,
22 we will consider whether to waive it.
23 We are not waiving it now if it's
24 outside the scope.

25 BY MS. NEILAN:

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1 Q. Why did West LB reclassify the
2 approximately twelve managers that it
3 reclassified in May 2007 from exempt to
4 non-exempt?

5 A. They were reclassified based on the
6 advice of counsel.

7 Q. What was the advice of counsel?

8 MR. BASSEN: Same direction.

9 BY MS. NEILAN:

10 Q. Did West LB make any retroactive
11 payments to any of the managers that it
12 reclassified in 2007?

13 A. No, not that I'm aware of.

14 Q. Why did West LB make retroactive
15 payments to executives in 2005 that had
16 been classified as exempt and reclassified
17 as non-exempt and not making retroactive
18 payments to managers who were classified
19 as exempt and then classified as non-
20 exempt?

21 A. Based on the advice of counsel.

22 Q. What was that advice?

23 MR. BASSEN: Same direction.

24 MS. NEILAN: Are you

25 directing her not to answer based on

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1 the attorney/client privilege?

2 MR. BASSEN: Exactly what I
3 said before.

4 MS. NEILAN: Based on
5 attorney/client privilege?

6 MR. BASSEN: Exactly what I
7 said before.

8 MS. NEILAN: I would like
9 to take a lunch break now.

10 (Luncheon recess taken,
11 11:46 a.m.)

12 ----
13 (Afternoon session
14 commenced, 12:38 p.m.)

15 BY MS. NEILAN:

16 Q. So, West LB classified all managers
17 as exempt between 2001 until 2007, is that
18 correct?

19 MR. BASSEN: Objection.

20 THE WITNESS: I can tell
21 you from the point that I joined
22 forward. I can't really speak to the
23 period before that.

24 BY MS. NEILAN:

25 Q. Do you have any knowledge regarding

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1 instructed you not to answer.

2 We have already discussed
3 the one conversation that you had with
4 outside counsel regarding West LB's
5 exemption testing and reclassification of
6 the managers. Apart from that, there's no
7 other conversations, is that correct?

8 A. I had no other conversations with
9 the attorney directly.

10 Q. Are there written communications
11 between you and outside counsel regarding
12 the same subject matter?

13 A. Me and outside counsel? No.

14 Q. Are there any other documents that
15 you're claiming privilege on and,
16 therefore, refusing to answer this
17 question with respect to the subject
18 matter of my question?

19 A. Could you be a little clearer with
20 that question?

21 Q. Are there documents that list the
22 factors that West LB's attorney considered
23 when conducting the exemption testing and
24 reclassification of managers?

25 A. There are the job descriptions

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1 which were central to the project. And
2 outside of that, I do not know what the
3 attorney used with respect to conducting
4 the reclassification.

5 Q. What about with respect to the
6 exemption testing?

7 A. I don't know what he used.

8 Q. I asked you earlier why West LB
9 only made retroactive payments to
10 executives going back to August 2004, do
11 you remember?

12 A. Yes.

13 Q. You did not testify based on the
14 advice of counsel based on the
15 attorney/client privilege. Is that based
16 on a conversation that you had with your
17 attorney?

18 A. That's based on the advice given to
19 us from outside counsel.

20 Q. Okay. And when did this take
21 place?

22 A. It would have taken place sometime
23 at the conclusion of the project.

24 Q. So, approximately, when was that?

25 A. Probably, January/February

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1 timeframe.

2 Q. And was it a conversation or was it
3 a written communication between you and
4 outside counsel?

5 A. There was no written communication
6 from me to anyone. I believe that the
7 information was -- the advice was given to
8 us verbally.

9 Q. And to whom was it given?

10 A. I believe that Greg Rieber and
11 possibly even Amy Favetta was involved in
12 those conversations.

13 Q. Was there anyone else present
14 during those conversations?

15 A. I don't know.

16 Q. Is there anything that would help
17 refresh your recollection?

18 A. No.

19 Q. Where did those conversations take
20 place?

21 A. I would assume they would have
22 taken place at the office.

23 MS. NEILAN: I have no
24 further questions at this moment,
25 again, because West LB has not